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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/089,597	07/12/2002	Ake Bergstrom	P/1228-150	2988
2352	7590	12/17/2003	EXAMINER	
OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403			HAYES, BRET C	
			ART UNIT	PAPER NUMBER
			3644	

DATE MAILED: 12/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/089,597

Applicant(s)

BERGSTROM ET AL.

Examiner

Bret C Hayes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-14 and 17-36 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 28-36 is/are allowed.
- 6) ☒ Claim(s) 10-14 and 17-27 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. ____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 10 – 14, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner ('503).

3. Re – claim 10, '503 discloses: a freight vehicle including lateral sides, a chassis **10**, an engine **20** supported on the chassis **10**, a driver's cab **21** mounted to the chassis **10** and above the engine **20**; a compartment in which the engine **20** is disposed, the compartment having lateral sides at the lateral sides of the vehicle; a panel **31** at least one of the lateral sides of the vehicle and laterally delineating the compartment, the panel **31** being pivotally mounted on the cab **21** to pivot laterally outward between a closed position enclosing the at least one lateral side of the compartment and an open position permitting access past the panel **31** to the engine **20** in the compartment. However, '503 does not disclose (1) the panel **31** being pivotally mounted on the chassis **10** and (2) a cover over the panel. (1) It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify '503 to include the panel being pivotally mounted on the chassis, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japiske*, 86 USPQ 70. (2) It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a cover over the panel, since the panel itself is a cover for the engine compartment, and since it has been held

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that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. (Examiner has attempted to more accurately indicate how the panel *is* a cover (and not a cover for itself) and the motivation for citing the above case law – to be explained in detail in the Response to Arguments section below.)

4. Re – claim 11, ‘503 discloses the claimed invention, as applied to claim 10 above, except for the panel 31 opening rearwardly with respect to the vehicle. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify ‘503 further to include the panel 31 opening rearwardly with respect to the vehicle, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

5. Re – claim 12, ‘503 further discloses a panel control arrangement 47 connected with the panel 31 and for controlling the movement of the panel 31 to the open access position.

6. Re – claim 13, ‘503 further discloses at least one accessible step 35 on the panel enabling a user to climb to the cab 21 on the step.

7. Re – claim 14, ‘503 discloses the claimed invention except for a frame on the chassis 10, a suspension arrangement on the frame and supporting the engine. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a frame on the chassis and a suspension arrangement on the frame supporting the engine, since, while not explicitly disclosed in ‘503, engines are normally supported by suspension arrangements – “motor mounts” – and to further include a frame, which motor-mount brackets could be considered to constitute, and since it has been held that mere duplication of the essential working

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parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

8. Re – claim 17, '503 discloses the claimed invention, see the rejection of claim 13 in view of the rejection of claim 1 above with regard to duplicating essential working parts.

9. Re – claim 18, '503 discloses the claimed invention; see the rejection of claim 12 in view of the rejection of claim 16 above, except for detachably coupling the cab door 28. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify '503 to rearrange the control arrangement 47 to detachably couple the door 28, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japiske*, 86 USPQ 70.

Allowable Subject Matter

10. Claims 19 – 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. Claims 28 – 36 are allowed.

Response to Arguments

12. Applicant's arguments filed 16 October 2003 have been fully considered but they are not persuasive.

13. Regarding the argument that the panel of Wagner is not also a cover and therefore not duplicable by one having ordinary skill in the art at the time the invention was made, Examiner asserts that the panel 31 is indeed a cover, as indicated above, for the engine compartment. The duplication of this cover **would be** obvious to one having ordinary skill, unless Applicant could

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agree that another application having a further cover over the claimed invention's panel and cover duo would be patentably distinct from Applicant's claimed invention. The office would not agree. Further, the motivation is provided by the case law itself: i.e., since it has been held that a mere duplication of the essential working parts of a device involves only routine skill in the art. What this implies is that one of ordinary skill in the art would not only find it a matter of obviousness, but would also be motivated to continue to merely duplicate the essential working parts ad infinitum. Further still, Examiner had never put forth the illogical argument (as alleged) that the panel was a cover for itself and does not do so in this rejection.

Conclusion

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (703) 306 – 0553. The examiner can normally be reached Monday through Friday from 5:30 am to 3:00 pm, Eastern Standard Time.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Jordan, can be reached at (703) 306 – 4159. The fax number is (703) 872 – 9306.

bh

12/4/03

Charles T. Jordan
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